

AMENDED IN ASSEMBLY AUGUST 9, 2004

SENATE BILL

No. 1895

Introduced by Senator Burton

March 3, 2004

~~An act to add Section 56135.5 to the Education Code, relating to special education.~~ *An act to add Sections 56139 and 56331 to the Education Code, to amend Section 7576 of, and to add Sections 7576.2 and 7576.3 to, the Government Code, and to add Section 5701.6 to the Welfare and Institutions Code, relating to special education.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1895, as amended, Burton. Special education: *mental health services.*

(1) Existing law requires school districts, county offices of education, and special education local plan areas to comply with state laws that conform to the federal Individuals with Disabilities Education Act, in order that the state may qualify for federal funds available for the education of individuals with exceptional needs. Existing law requires school districts, county offices of education, and special education local plan areas to identify, locate, and assess individuals with exceptional needs and to provide those pupils with a free appropriate public education in the least restrictive environment, with special education and related services as reflected in an individualized education program.

This bill would authorize a local educational agency to refer a pupil suspected of needing mental health services to a community mental health service in accordance with specified provisions. The bill would prescribe certain requirements relating to making those referrals and providing related services.

(2) Existing law requires the Superintendent of Public Instruction to administer the special education provisions of the Education Code and to be responsible for assuring provision of, and supervising, education and related services to individuals with exceptional needs as required pursuant to the federal Individuals with Disabilities Education Act.

This bill would provide that the superintendent is responsible for monitoring local educational agencies to ensure compliance with the requirement to provide mental health services to individuals with exceptional needs and to ensure that funds provided for this purpose are appropriately utilized. The bill would require the superintendent to submit a report to the Legislature by April 1, 2005, that includes specified information and recommendations relating to the provision and monitoring of mental health services, as provided. The bill would require the superintendent to collaborate with the Director of the State Department of Mental Health in preparing the report and to convene at least one meeting of appropriate stakeholders and organizations to obtain input.

(3) Existing law makes the State Department of Mental Health or any community mental health service designated by the department for the provision of mental health services when required in a child's individualized education program. Existing law authorizes an individualized education program team or local educational agency to make a referral for mental health services for a pupil to a community mental health service when certain criteria are met and to provide certain documentation when making that referral.

This bill would revise certain provisions of the criteria and of the documentation requirements.

This bill would provide that the Director of the State Department of Mental Health is responsible for monitoring county mental health agencies to ensure compliance with the requirement to provide mental health services to disabled pupils and to ensure that funds provided for this purpose are appropriately utilized. The bill would require the director to submit a report to the Legislature by April 1, 2005, that includes specified information and recommendations relating to the provision and monitoring of mental health services, as provided. The bill would require the director to collaborate with the Superintendent of Public Instruction in preparing the report and to convene at least one meeting of appropriate stakeholders and organizations to obtain input.

This bill would declare the intent of the Legislature that the director collaborate with an entity with expertise in children's mental health to

collect, analyze, and disseminate best practices, as provided, for delivering mental health services to disabled pupils.

(4) Existing law provides that counties are to continue to receive reimbursement from specifically appropriated funds for costs necessarily incurred in providing psychotherapy and other mental health services for handicapped and disabled pupils and that counties are not required to provide any share of those costs or to fund the cost of any part of these services with money receive from the Local Revenue Fund for reimbursement claims for services delivered in the 2001–02 fiscal year and thereafter to handicapped and disabled pupils.

This bill would authorize counties to utilize money received from the Local Revenue Fund to fund the costs of any part of those mental health services and would provide that counties who use money from that fund for those services are eligible for reimbursement from the state, as provided. The bill would provide that these provisions are declaratory of existing law.

(5) Existing law requires, if the Commission on State Mandates determines that an act contains costs mandated by the state, that reimbursement to local agencies and school districts for those costs be made, as specified.

This bill would require the Commission on State Mandates to, on or before December 31, 2005, reconsider its decision relating to administrative and travel costs associated with certain mental health services provided to disabled pupils, and its parameters and guidelines for calculating the state reimbursements for these costs.

(6) The Budget Act of 2004 requires that \$31,000,000 of certain funds appropriated to the State Department of Education for special education programs for exceptional children to be used to provide mental health services required by an individual education plan pursuant to the federal Individuals with Disabilities Education Act and pursuant to legislation enacted in the 2003–04 Regular Session that clarifies the manner in which the services are to be provided.

This bill would provide that those funds shall be allocated to local educational agencies on a per average daily attendance basis to implement Section 2 of this act.

(7) The Budget Act of 2004 requires that, pursuant to legislation enacted in the 2003–04 Regular Session, \$69,000,000 of certain funds appropriated to the State Department of Education for special education programs for exceptional children to be used exclusively to

support mental health services provided during the 2004–05 fiscal year by county mental health agencies, as provided.

This bill would provide that those funds shall be used exclusively to support mental health services that were both included within an individualized education program and that were provided during the fiscal year by county mental health agencies pursuant to specified provisions. The bill would provide that this funding shall not be provided for services that are not required pursuant to the federal Individuals with Disabilities Education Act and shall offset any mandate reimbursement claims for the fiscal year that may be filed by a county pursuant to specified provisions. The bill would require the \$69,000,000 to be distributed consistent with an allocation plan formulated by the State Department of Mental Health. The bill would require the State Department of Mental Health to submit an allocation plan to the Department of Finance for approval, as provided, and to the Joint Legislative Budget Committee. The bill would specify the manner in which the allocation of each county is to be distributed.

~~Existing law sets forth a method for providing special education and related services to pupils who are individuals with exceptional needs. Existing law requires the Superintendent of Public Instruction to administer the special education provisions of the Education Code and to be responsible for assuring provision of, and supervising, education and related services to individuals with exceptional needs as required pursuant to the federal Individuals with Disabilities Education Act.~~

~~This bill would provide that the Superintendent of Public Instruction and the Secretary of Health and Welfare are jointly responsible for ensuring maximum utilization of all state and federal resources that are available to provide a child with a disability with a free appropriate public education, the provision of related services, and designated instruction and services. The bill would also require the Superintendent of Public Instruction to ensure that the special education provisions are carried out through monitoring and supervision.~~

~~Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.~~

The people of the State of California do enact as follows:

1 SECTION 1. ~~Section 56135.5 is added to the Education Code,~~
2 ~~to read:~~

~~56135.5. (a) The superintendent and the Secretary of Health and Welfare are jointly responsible for ensuring maximum utilization of all state and federal resources that are available to provide a child with a disability, as defined in paragraph (3) of Section 1401 of Title 20 of the United States Code, with a free appropriate public education, the provision of related services, as defined in paragraph (22) of Section 1401 of Title 20 of the United States Code, and designated instruction and services, as defined in Section 56363.~~

~~(b) The superintendent shall ensure that this part is carried out through monitoring and supervision.~~

SECTION 1. Section 56139 is added to the Education Code, to read:

56139. (a) The superintendent is responsible for monitoring local educational agencies to ensure compliance with the requirement to provide mental health services to individuals with exceptional needs pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code and to ensure that funds provided for this purpose are appropriately utilized.

(b) The superintendent shall submit a report to the Legislature by April 1, 2005, that includes all of the following:

(1) A description of the data that is currently collected by the department related to pupils served and services provided pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code.

(2) A description of the existing monitoring processes used by the department to ensure that local educational agencies are complying with Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code, including the monitoring performed to ensure the appropriate use of funds for programs identified in Section 64000.

(3) Recommendations on the manner in which to strengthen and improve monitoring by the department of the compliance by a local educational agency with the requirements of Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code, on the manner in which to strengthen and improve collaboration and coordination with the State Department of Mental Health in monitoring and data collection activities, and on the additional data needed related to Chapter

1 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the
2 Government Code.

3 (c) The superintendent shall collaborate with the Director of
4 the State Department of Mental Health in preparing the report
5 required pursuant to subdivision (b) and shall convene at least one
6 meeting of appropriate stakeholders and organizations, including
7 a representative from the State Department of Mental Health and
8 mental health directors, to obtain input on existing data collection
9 and monitoring processes, and on ways to strengthen and improve
10 the data collected and monitoring performed.

11 SEC. 2. Section 56331 is added to the Education Code, to
12 read:

13 56331. (a) A pupil who is suspected of needing mental health
14 services may be referred to a community mental health service in
15 accordance with Section 7576 of the Government Code.

16 (b) Prior to referring a pupil to a county mental health agency
17 for services, the local educational agency shall follow the
18 procedures set forth in Section 56320 and conduct an assessment
19 in accordance with Sections 300.530 to 300.536 of Title 34 of the
20 Code of Federal Regulations. If an individual with exceptional
21 needs is identified as potentially requiring mental health services,
22 the local educational agency shall request the participation of the
23 county mental health agency in the individualized education
24 program. A local educational agency shall provide any
25 specially-designed instruction required by an individualized
26 education program, including related services such as counseling
27 services, parent counseling and training, psychological services,
28 or social work services in schools as defined in Section 300.24 of
29 Title 34 of the Code of Regulations. If the individualized education
30 program of an individual with exceptional needs includes a
31 functional behavioral assessment and behavior intervention plan,
32 in accordance with Section 300.520 of Title 34 of the Code of
33 Federal Regulations, the local educational agency shall provide
34 documentation upon referral to a county mental health agency.
35 Local educational agencies shall provide related services, by
36 qualified personnel, as defined by Section 300.23 of Title 34 of the
37 Federal Code of Regulations, unless the individualized education
38 program team designates a more appropriate agency for the
39 provision of services. Local educational agencies and community
40 mental health services shall work collaboratively to ensure that



assessments performed prior to referral are as useful as possible to the community mental health service in determining the need for mental health services and the level of services needed.

SEC. 3. Section 7576 of the Government Code is amended to read:

7576. (a) The State Department of Mental Health, or any community mental health service, as defined in Section 5602 of the Welfare and Institutions Code, designated by the State Department of Mental Health, ~~shall be~~ are responsible for the provision of mental health services, as defined in regulations by the State Department of Mental Health, developed in consultation with the State Department of Education, ~~when~~ if required in the pupil's individualized education program of a pupil. A local ~~education~~ educational agency ~~shall~~ is not be required to place a pupil in a more restrictive educational environment in order for the pupil to receive the mental health services specified in the pupil's ~~his or her~~ individualized education program if the mental health services can be appropriately provided in a less restrictive setting. It is the intent of the Legislature that the local ~~education~~ educational agency and the community mental health service vigorously attempt to develop a mutually satisfactory placement that is acceptable to the parent and addresses the pupil's educational and mental health treatment needs of the pupil in a manner that is cost-effective for both public agencies, subject to the requirements of state and federal special education law, including the requirement that the placement be appropriate and in the least restrictive environment. For purposes of this section, "parent" is as defined in Section 56028 of the Education Code.

(b) A local ~~education~~ educational agency, individualized education program team, or parent may initiate a referral for assessment of a pupil's the social and emotional status of a pupil, pursuant to Section 56320 of the Education Code. Based on the results of assessments completed pursuant to Section 56320 of the Education Code, an individualized education program team may refer a pupil who has been determined to be an individual with exceptional needs as defined in Section 56026 of the Education Code and who is suspected of needing mental health services to a community mental health service ~~when a~~ if the pupil meets all of the criteria in paragraphs (1) to (5), inclusive. Referral packages shall include all documentation required in subdivision (c), and

1 shall be provided immediately to the community mental health
2 service.

3 (1) The pupil has been assessed by school personnel in
4 accordance with Article 2 (commencing with Section 56320) of
5 Chapter 4 of Part 30 of the Education Code. Local ~~education~~
6 *educational* agencies and community mental health services shall
7 work collaboratively to ensure that assessments performed prior
8 to referral are as useful as possible to the community mental health
9 service in determining the need for mental health services and the
10 level of services needed.

11 (2) The local ~~education~~ *educational* agency has obtained
12 written parental consent for the referral of the pupil to the
13 community mental health service, for the release and exchange of
14 all relevant information between the local ~~education~~ *educational*
15 agency and the community mental health service, and for the
16 observation of the pupil by mental health professionals in an
17 educational setting.

18 (3) The pupil has emotional or behavioral characteristics that
19 *are all of the following:*

20 (A) Are observed by qualified educational staff in educational
21 and other settings, as appropriate.

22 (B) Impede the pupil from benefiting from educational
23 services.

24 (C) Are significant as indicated by their rate of occurrence and
25 intensity.

26 (D) Are associated with a condition that cannot be described
27 solely as a social maladjustment or a temporary adjustment
28 problem, and cannot be resolved with short-term counseling.

29 (4) As determined using educational assessments, the pupil's
30 functioning, including cognitive functioning, is at a level
31 sufficient to enable the pupil to benefit from mental health
32 services.

33 (5) The local ~~education~~ *educational* agency, *pursuant to*
34 *Section 56331 of the Education Code*, has provided *any*
35 *appropriate counseling and guidance services*, psychological, ~~or~~
36 ~~guidance services~~ *services, parent counseling and training, or*
37 *social work services* to the pupil pursuant to Section 56363 of the
38 Education Code, *or behavioral intervention as specified in Section*
39 *56520 of the Education Code, as specified in the individualized*
40 *education program* and the individualized education program



1 team has determined that the services do not meet the pupil's
2 educational needs *of the pupil*, or, in cases where these services are
3 clearly *inadequate or inappropriate to meet the educational needs*
4 *of the pupil*, the individualized education program team has
5 documented which of these services were considered and why they
6 were determined to be *inadequate or inappropriate*.

7 (c) ~~When~~ If referring a pupil to a community mental health
8 service in accordance with subdivision (b), the local ~~education~~
9 *educational* agency or the individualized education program team
10 shall provide the following documentation:

11 (1) Copies of the current individualized education program, all
12 current assessment reports completed by school personnel in all
13 areas of suspected disabilities pursuant to Article 2 (commencing
14 with Section 56320) of Chapter 4 of Part 30 of the Education Code,
15 and other relevant information, including reports completed by
16 other agencies.

17 (2) A copy of the parent's consent obtained as provided in
18 paragraph (2) of subdivision (b).

19 (3) A summary of the emotional or behavioral characteristics
20 of the pupil, including documentation that the pupil meets the
21 criteria set forth in paragraphs (3) and (4) of subdivision (b).

22 (4) A description of the counseling, psychological, and
23 guidance services, and other interventions that have been provided
24 to the pupil, *as provided in the individualized education program*
25 *of the pupil*, including the initiation, duration, and frequency of
26 these services, or an explanation of ~~why~~ *the reasons* a service was
27 considered for the pupil and determined to be *inadequate or*
28 *inappropriate to meet his or her educational needs*.

29 (d) Based on preliminary results of assessments performed
30 pursuant to Section 56320 of the Education Code, a local
31 ~~education~~ *educational* agency may refer a pupil who has been
32 determined to be, or is suspected of being, an individual with
33 exceptional needs, and is suspected of needing mental health
34 services, to a community mental health service ~~when~~ *if* a pupil
35 meets the criteria in paragraphs (1) and (2). Referral packages shall
36 include all documentation required in subdivision (e) and shall be
37 provided immediately to the community mental health service.

38 (1) The pupil meets the criteria in paragraphs (2) to (4),
39 inclusive, of subdivision (b).

(2) ~~Counseling and guidance services, psychological, and guidance services services, parent counseling and training, social work services, and behavioral or other interventions as provided in the individualized education program of the pupil~~ are clearly inadequate or inappropriate in meeting ~~the pupil's~~ his or her educational needs.

(e) ~~When~~ If referring a pupil to a community mental health service in accordance with subdivision (d), the local ~~education~~ educational agency shall provide the following documentation:

(1) Results of preliminary assessments to the extent they are available and other relevant information including reports completed by other agencies.

(2) A copy of the parent's consent obtained as provided in paragraph (2) of subdivision (b).

(3) A summary of the emotional or behavioral characteristics of the pupil, including documentation that the pupil meets the criteria in paragraphs (3) and (4) of subdivision (b).

(4) *Documentation that appropriate related educational and designated instruction and services have been provided in accordance with Sections 300.530 to 300.536 of Title 34 of the Code of Federal Regulations.*

~~(4)~~

(5) An explanation as to ~~why~~ the reasons that counseling and guidance services, psychological, ~~and guidance services services, parent counseling and training, social work services, and behavioral or other interventions as provided in the individualized education program of the pupil~~ are clearly inadequate or inappropriate in meeting ~~the pupil's~~ his or her educational needs.

(f) The procedures set forth in this chapter are not designed for use in responding to psychiatric emergencies or other situations requiring immediate response. In these situations, a parent may seek services from other public programs or private providers, as appropriate. This subdivision ~~shall~~ does not change the identification and referral responsibilities imposed on local ~~education~~ educational agencies under Article 1 (commencing with Section 56300) of Chapter 4 of Part 30 of the Education Code.

(g) Referrals shall be made to the community mental health service in the county in which the pupil lives. If the pupil has been placed into residential care from another county, the community mental health service receiving the referral shall forward the

referral immediately to the community mental health service of the county of origin, which shall have fiscal and programmatic responsibility for providing or arranging for provision of necessary services. In no event shall the procedures described in this subdivision delay or impede the referral and assessment process.

SEC. 4. Section 7576.2 is added to the Government Code, to read:

7576.2. (a) The Director of the State Department of Mental Health is responsible for monitoring county mental health agencies to ensure compliance with the requirement to provide mental health services to disabled pupils pursuant to this chapter and to ensure that funds provided for this purpose are appropriately utilized.

(b) The Director of the State Department of Mental Health shall submit a report to the Legislature by April 1, 2005, that includes the following:

(1) A description of the data that is currently collected by the State Department of Mental Health related to pupils served and services provided pursuant to this chapter.

(2) A description of the existing monitoring process used by the State Department of Mental Health to ensure that county mental health agencies are complying with this chapter.

(3) Recommendations on the manner in which to strengthen and improve monitoring by the State Department of Mental Health of the compliance by a county mental health agency with the requirements of this chapter; on the manner in which to strengthen and improve collaboration and coordination with the State Department of Education in monitoring and data collection activities, and on the additional data needed related to this chapter.

(c) The Director of the State Department of Mental Health shall collaborate with the Superintendent of Public Instruction in preparing the report required pursuant to subdivision (b) and shall convene at least one meeting of appropriate stakeholders and organizations, including a representative from the State Department of Education, to obtain input on existing data collection and monitoring processes, and on ways to strengthen and improve the data collected and monitoring performed.

1 SEC. 5. Section 7576.3 is added to the Government Code, to
2 read:

3 7576.3. It is the intent of the Legislature that the Director of
4 the State Department of Mental Health collaborate with an entity
5 with expertise in children's mental health to collect, analyze, and
6 disseminate best practices for delivering mental health services to
7 disabled pupils. The best practices may include, but are not limited
8 to:

9 (a) Interagency agreements in urban, suburban, and rural
10 areas that result in clear identification of responsibilities between
11 local educational agencies and county mental health agencies and
12 result in efficient and effective delivery of services to pupils.

13 (b) Procedures for developing and amending individualized
14 education programs that include mental health services that
15 provide flexibility to educational and mental health agencies and
16 protect the interests of children in obtaining needed mental health
17 needs.

18 (c) Procedures for creating ongoing communication between
19 the classroom teacher of the pupil and the mental health
20 professional who is directing the mental health program for the
21 pupil.

22 SEC. 6. Section 5701.6 is added to the Welfare and
23 Institutions Code, to read:

24 5701.6. (a) Counties may utilize money received from the
25 Local Revenue Fund established by Chapter 6 (commencing with
26 Section 17600) of Part 5 of Division 9 to fund the costs of any part
27 of those services provided pursuant to Chapter 26.5 (commencing
28 with Section 7570) of Division 7 of Title 1 of the Government Code.
29 If money from the Local Revenue Fund is used by counties for those
30 services, counties are eligible for reimbursement from the state for
31 all allowable costs to fund assessments, psychotherapy, and other
32 mental health services allowable pursuant to federal law and
33 required by Chapter 26.5 (commencing with Section 7570) of
34 Division 7 of Title 1 of the Government Code.

35 (b) This section is declaratory of existing law.

36 SEC. 7. Notwithstanding any other law, the Commission on
37 State Mandates shall, on or before December 31, 2005, reconsider
38 its decision relating to administrative and travel costs associated
39 with services provided pursuant to Chapter 26.5 (commencing
40 with Section 7570) of Division 7 of Title 1 of the Government Code,

1 *and the parameters and guidelines for calculating the state*
2 *reimbursements for these costs.*

3 *SEC. 8. The funds identified in Provision 20 of Item*
4 *6110-161-0001 of Section 2.00 of the Budget Act of 2004 (Chapter*
5 *208, Statutes of 2004), shall be allocated to local educational*
6 *agencies on a per average daily attendance basis to implement*
7 *Section 2 of this act.*

8 *SEC. 9. (a) The funds identified in Provision 10 of Item*
9 *6110-161-0890 of Section 2.00 of the Budget Act of 2004 shall be*
10 *used exclusively to support mental health services that were both*
11 *included within an individualized education program pursuant to*
12 *the federal Individuals with Disabilities Education Act (20 U.S.C.*
13 *Sec. 1400 et seq.) and that were provided during the fiscal year by*
14 *county mental health agencies pursuant to Chapter 26.5*
15 *(commencing with Section 7570) of Division 7 of Title 1 of the*
16 *Government Code. Funding from this item shall not be provided*
17 *for services that are not required pursuant to the federal*
18 *Individuals with Disabilities Education Act. Funding provided*
19 *from this item shall offset any mandate reimbursement claims for*
20 *the fiscal year that may be filed by a county pursuant to Chapter*
21 *26.5 (commencing with Section 7570) of Division 7 of Title 1 of the*
22 *Government Code. The sixty-nine million dollars (\$69,000,000)*
23 *identified in Provision 10 of that item shall be distributed*
24 *consistent with an allocation plan formulated by the State*
25 *Department of Mental Health, in consultation with representatives*
26 *of county mental health agencies. The allocation plan shall be*
27 *based on the most accurate available data, including, but not*
28 *limited to, county cost reports for this program, and include a*
29 *minimum-based methodology to address small county concerns.*

30 *(b) The State Department of Mental Health shall submit an*
31 *allocation plan to the Department of Finance and the Joint*
32 *Legislative Budget Committee. The Department of Finance shall*
33 *review the plan and either approve or disapprove the plan within*
34 *21 days of submission. If the Department of Finance fails to*
35 *approve or disapprove the plan within the 21 days, the plan shall*
36 *be deemed to be approved. If the Department of Finance*
37 *disapproves the plan it shall submit a letter to the Joint Legislative*
38 *Budget Committee that explains the rationale for disapproval and*
39 *convene a working group consisting of representatives of the*
40 *Department of Finance and the State Department of Mental*

1 *Health and staff of the appropriate policy and fiscal committees of*
2 *the Legislature. The working group shall jointly develop a revised*
3 *expenditure plan and submit that plan to the Director of Finance*
4 *for approval.*

5 *(c) Not less than 90 percent of the allocation of each county*
6 *shall be distributed no later than 90 days after approval of the*
7 *allocation methodology by the Department of Finance. The*
8 *remaining 10 percent shall be distributed to counties upon final*
9 *cost-settlement for fiscal year 2004–05 claims. A county is not*
10 *entitled to receive, after claims are cost settled, more funding than*
11 *was actually expended for this mental health program.*

